

STATE OF INDIANA  
INDIANA UTILITY REGULATORY COMMISSION

**FILED**

JUL 06 2001

In the Matter of the Petition of )  
Indiana Bell Telephone Company, )  
Incorporated d/b/a Ameritech Indiana )  
Pursuant to I.C. 8-1-2-61 For a Three )  
Phase Process For Commission )  
Review of Various Submissions of )  
Ameritech Indiana to Show Compliance )  
with Section 271(c) of The Telecommunications )  
Act of 1996 )

INDIANA UTILITY REGULATORY COMMISSION  
Cause No. 41657

**MOTION FOR RESOLUTION**  
**OF DISPUTED SPECIAL ACCESS ISSUE**

Time Warner Telecom of Indiana, L.P. ("TWTC") by counsel, hereby respectfully requests the Commission resolve the disputed Special Access Issue now pending and in support states:

1. On February 21, 2001, TWTC submitted its statement of disputed issue regarding the inclusion of Special Access Service to the Ameritech 271 e-mail distribution list, a copy of which is attached hereto as Exhibit A. Ameritech Indiana submitted a response on February 27, 2001 and TWTC submitted its reply on March 1, 2001, copies of which are attached hereto as Exhibits B and C respectively.

2. The Special Access Service disputed issue was specifically referenced in the Joint Petition for Approval of the Indiana Master Test Plan ("MTP"), submitted on March 14, 2001. The Joint Petitioners requested the Commission issue an Order resolving the existing MTP disputed issues on an expedited basis, but agreed that the disputed issues could be addressed subsequent to the approval of the MTP to enable testing to begin. The Commission approved the Master Test Plan on March 19, 2001, but did not address the disputed Special Access issue.

In its March 19<sup>th</sup> Order, the Commission stated that, “[a]ll issues outstanding and not addressed in this Order will be acted upon in subsequent orders or docket entries.” *IURC Order, Cause No. 41657, March 19, 2001, at p. 18.*

3. Subsequent to the March 19, 2001 Order approving the MTP, the Commission has implemented an expedited dispute resolution process and resolved other MTP related issues.

4. The disputed Special Access issue involves TWTC’s request that SBC/Ameritech include performance metrics and associated penalties for Special Access Services. Special Access Services are services that are purchased out of an ILEC’s federal or state tariff. For example, SBC/Ameritech offers high capacity circuits, such as a DS1 and DS3 service, in its federal tariff. These services are functionally equivalent to the unbundled network elements (“UNEs”) and resold high capacity services that SBC/Ameritech offers via its interconnection agreements or resale tariffs. Special Access DS1 and DS3 services, UNE DS1 and DS3 and/or resale DS1 and DS3 services offer a combination of functionally equivalent, dedicated transport and loop network elements used to deliver a mixture of intrastate and interstate traffic to CLEC end user customers.

5. Recently, the Texas Public Utilities Commission agreed with TWTC’s request, finding that Special Access Services should be reported and included in the Performance Measures. In its Order, attached hereto as Exhibit D, the Texas PUC found that, “to the extent a CLEC orders special access in lieu of UNEs, SWBT’s performance shall be measured as another level of disaggregation in all UNE measures.” *Section 271 Compliance Monitoring of Southwestern Bell Telephone Company of Texas, Project No. 20400, Transcript of Open Meeting, April 24, 2001.* The Texas Commission held a workshop last week to discuss implementation of the reporting measures. Attached hereto as Exhibit E is the portion of the

Texas Performance Metrics Matrix outlining the various positions of the parties and the Texas Commission's ruling on the Special Access issue in the Texas 271 proceeding.

6. The New York Public Service Commission also ordered the inclusion of Special Access Services Performance Measure reporting and ordered Verizon to file a warranty tariff to incent Verizon to provide quality service. The New York Commission stated:


Verizon provides inferior service to competitive carriers in provisioning of special services. Based on the complaints of the parties and Staff's analysis, it appears that carriers rely heavily on Verizon to provide special access, and that these services are used by competitive carriers to offer local, as well as other telecommunications services. Thus, a failure by Verizon to adequately serve the needs of competitive carriers could undermine local competition.

*Consolidated Case Nos. 00-C-2051 and 92-C-0665, Opinion and Order No. 01-1 Modifying Special Services Guidelines for Verizon New York (June 15, 2001), page 16.* The New York Commission's decision can be accessed at <http://www.dps.state.ny.us/fileroom/doc10022.pdf>.

7. TWTC is concerned that testing has been ongoing in Indiana for several months and the Special Access disputed issue has not yet been resolved. The issue has been fully briefed, and no additional briefing is necessary. If the Commission agrees with TWTC's position, KMPG will need to include Special Access into the MTP. Hence, the Commission should consider this disputed issue before the test gets too far underway.

WHEREFORE, TWTC respectfully requests the Commission issue a ruling on the disputed Special Access issue, and for all other appropriate relief.

Respectfully submitted,

  
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Nikki G. Shoultz, Atty. #P6509-41  
Counsel for Time Warner Telecom  
of Indiana, L.P.

### CERTIFICATE OF SERVICE

The undersigned certifies that on the 6<sup>th</sup> day of July, 2001, copies of the foregoing were mailed by first class United States mail, postage prepaid, to:

Karol Krohn  
Office Of Utility Consumer Counselor  
Indiana Government Center North  
100 North Senate, Room N501  
Indianapolis, Indiana 46204

Douglas W. Trabaris  
Senior Attorney  
AT&T Corp.  
222 West Adams Street; 15<sup>th</sup> Floor  
Chicago, Illinois 60606

Michael J. Huston  
Michael E. Allen  
Baker & Daniels  
300 North Meridian Street; Suite 2700  
Indianapolis, Indiana 46204

John Kern  
2300 N. Barrington Road, Suite 400  
Hoffman Estates, Il 60195

Frank Darr  
National Regulatory Research Institute  
1080 Carmack Road  
Columbus, Oh 43210

Jack R. Boheim  
President  
MTG Consulting  
P.O. Box 2448  
Mendocino, Ca 95460


Charles R. Mercer, Jr.  
Sprint  
One North Capitol Ave., Suite 540  
Indianapolis, Indiana 46204

Robert K. Johnson  
Christopher C. Earle  
Bose McKinney & Evans  
2700 First Indiana Plaza  
135 North Pennsylvania Street  
Indianapolis, Indiana 46204

Ellyn Elise Crutcher  
Associate General Counsel  
McLeodUSA Telecommunications Services  
121 South 17<sup>th</sup> Street  
Mattoon, Il 61920

Richard E. Aikman, Jr.  
STEWART & IRWIN  
Two Market Center  
251 East Ohio Street, Suite 100  
Indianapolis, In 46204

William Powers  
111 Monument Circle, Suite 302  
Indianapolis, IN 46204

  
Nikki G. Shoultz

**EXHIBIT A**

**TWTC'S STATEMENT OF DISPUTED ISSUE  
WITH TESTIMONY OF TIM KAGELE & ACCESS PERFORMANCE  
MEASURES MAPPING INDIANA PERFORMANCE MEASURES**

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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Cause No. 41657

TIME WARNER TELECOM OF INDIANA, L.P.'S  
STATEMENT OF DISPUTED ISSUES

*SPECIAL ACCESS SERVICE*

**I. Statement of the Issue and Background:**

Time Warner Telecom of Indiana, L.P. ("Time Warner Telecom") requests that SBC/Ameritech include performance metrics and associated penalties for Special Access services. Special Access Services are services that are purchased out of an ILEC's federal or state tariff. For example, SBC/Ameritech offers high capacity circuits, such as a DS1 and DS3 service, in its federal tariff. These services are functionally equivalent to the unbundled network elements ("UNEs") and resold high capacity services that SBC/Ameritech offers via its interconnection agreements or resale tariffs. Special Access DS1 and DS3 services, UNE DS1 and DS3 and/or resale DS1 and DS3 services offer a combination of functionally equivalent, dedicated transport and loop network elements used to deliver a mixture of intrastate and interstate traffic to CLEC end user customers.

*Exhibit A*

## **II. Summary of Time Warner Telecom's Position**

CLECs purchase Special Access Services from SBC/Ameritech for the same purpose unbundled elements or resold services are used - to complete the link to the customer. SBC/Ameritech is often the only economically viable option for providing last mile facility to competitor's end user customers and competitors rely upon the Special Access Services to complete the service to their end users instead of duplicating SBC/Ameritech's existing network. Therefore, the use of high capacity circuits directly supports intrastate service competition.

Time Warner Telecom seeks to have SBC/Ameritech measure and report its provisioning of Special Access Services consistent with the manner it reports its provisioning of equivalent unbundled network elements and resale services. Receiving quality service from the ILEC, whether the CLEC orders that service out of a tariff or an interconnection agreement, is essential to the development of robust competition.

SBC/Ameritech makes available only a handful of reporting metrics, across a limited number of OSS reporting categories, but does not include other critical metrics and OSS reporting categories including Special Access Services. SBC/Ameritech refuses to include essential reporting of SBC/Ameritech's ordering, jeopardy notification, and facility modification process for Special Access Services. Time Warner Telecom's position is supported by the testimony of Tim Kagele, its Vice President of Carrier Relations & Interconnect Operations, which testimony is attached hereto as Exhibit A.



### **III. Special Access Services Should be Included in Performance Measures**

#### ***A. Special Access Services Should Be Included In Performance Measures Because They Are The Functional Equivalent Of UNEs***

SBC/Ameritech's refusal to include all of the relevant metrics and associated penalties for the equivalent Special Access Services is based on its claim that Special Access Services are not part of the Section 271 checklist, and that those Special Access Services are interstate services that are within the jurisdiction of the FCC. To the contrary, Special Access Services should be included in performance measures for the reasons set forth below.

While "Special Access" may not be specifically mentioned in Section 271, dedicated transport and access to the local loop, which are components of special access, are included. 47 USC Section 271(c)(2)(B)(iv) and (v). As the FCC recognized in its UNE Remand Order, Special Access Services provide the functional equivalent of certain unbundled network elements, which include dedicated transport and access to the local loop. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, paragraphs 480-481, 1999 WL 1008985. Special Access clearly qualifies as local transport under the Section 271 competitive checklist. Most compelling, however, is the recent *Public Notice: Comments Sought On The Use of Unbundled Network Elements to Provide Exchange Access Service*, DA 01-169, CC Docket No. 96-98, January 24, 2001, ("*Public Notice*"). In the *Public Notice* at Paragraph 3, the FCC questions whether "...the same facilities that are available to interexchange carriers (IXCs) for exchange access service [are] equally available to competitive LECs to provide local exchange service,..." The FCC also considers whether "the exchange access market [is] economically and technically distinct from the local exchange market?" This most recent *Public*

*Notice* indicates the FCC's willingness to consider Special Access Services as interchangeable with UNEs for the provision of local exchange service as well as exchange access service.

Additionally, in his testimony in the Ohio OSS proceeding, SBC/Ameritech's expert, Mr. Salvatore Fioretti states that SBC/Ameritech offers "equivalent" UNEs that can perform a similar function to Special Access Services. *In the Matter of the Further Investigation Into Ameritech Ohio's Entry Into In- Region InterLATA Service Under Section 271 of the Telecommunications Act of 1996, Public Utilities Commission of Ohio, Case No. 00-942-TP-COI*; Fioretti Direct at 10. Time Warner Telecom notes that Mr. Fioretti refers to UNEs and Special Access Services as being "equivalent" which is consistent with Time Warner Telecom's contention that Special Access Services and UNEs are "functionally equivalent."

Moreover, this Commission should not be constrained by SBC/Ameritech's narrow interpretation of Section 271, because Section 271 allows the Commission to consider various obstacles to competition in Indiana as part of the public interest analysis. 47 USC Section 271 (d)(3)(C). If SBC/Ameritech were allowed to treat equivalent services differently, it would single out carriers who use Special Access Services and discriminate among carriers based on the method of entry, contrary to the intent of the Telecommunications Act of 1996. CLECs that purchase high capacity services on a resold or unbundled basis will have more performance data, metrics and benchmarks to measure whether they are receiving quality service, and if SBC/Ameritech's performance is below the standards, those CLECs will have remedies and penalties to compensate them for that poor service. Therefore, SBC/Ameritech will be incented to ensure that it complies with the metrics for resold and unbundled high capacity services, but will not have that same incentive for the equivalent services purchased by CLECs utilizing SBC/Ameritech's tariff-based Special Access Services. Exclusion of high capacity Special

Access Services that are used to deliver mixed traffic (intrastate and interstate) amounts to disparate treatment of CLECs choosing this mode of market entry where no apparent distinction is made for equivalent unbundled or resale services. Therefore, it is proper and appropriate to include Special Access Services ordered from tariffs as part of 271 to protect against post 271 backsliding by SBC/Ameritech.

Other state commissions, such as Minnesota and New York, have taken steps to ensure that local competition develops by beginning to review the need for service standards for Special Access Services. In New York, a large number of systemic problems reported by CLECs in Verizon's delivery of tariff based Special Services led the New York Commission to open an investigation into Verizon's performance in this area. *Proceeding to Investigate Methods to Improve and Maintain High Quality Special Services Performance by Verizon New York Inc.*, and *Proceeding on Motion of the Commission to Investigate Performance Based Incentive Regulatory Plans for New York Telephone Company*, NY PSC Consolidated Case Nos. 00-C-2051, 92-C-0665 (Order Instituting Proceeding, November 24, 2000), 2000 N.Y. PUC LEXIS 948. The New York Commission found:

Verizon continues to be the dominant carrier for Special Services and other carriers rely heavily on Verizon to provision services for their customers. Therefore, both retail and wholesale aspects of Special Services deserve careful attention to ensure adequate service. (*Id.*, p.\*2).

The Commission specifically ordered Verizon to file comments discussing the expansion of the service guidelines to include metrics for ordering and provisioning of Special Services and incentives to met new metrics for special services. (*Id.* at p. \*4-5). The staff noted that the Commission had already established similar metrics for unbundled network elements and those should be readily adaptable to Special Services. (*Id.* at First Attachment, p. \*33). Similarly, the

metrics that have been developed in Indiana for unbundled network elements are readily adaptable to Special Access Services, and should be applied in this case.

The Minnesota Commission recently opened an investigation into the development of service standards for Special Access Services. *In the Matter of the Complaint of AT&T Communications of the Midwest, Inc. Against US West Communications, Inc. Regarding Access Service*, Minn. PUC Docket No. P-421/C-99-1183 (Order Finding Jurisdiction, Rejecting Claims for Relief, and Opening Investigation, August 15, 2000), 2000 Minn. PUC LEXIS 53. The Minnesota Commission rejected the same argument that SBC/Ameritech makes here – that a state does not have jurisdiction over these services because the services are offered under a federal tariff. The Minnesota Commission acknowledged that it has the jurisdictional authority to regulate the quality of Intrastate Access services, whether provided under State or federal tariffs because the facilities used to deliver service were “mixed use” facilities.<sup>1</sup> The Indiana Commission has jurisdiction to regulate the quality of service of Ameritech when those services are used to provide intrastate service.

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<sup>1</sup> “Congress has not preempted state regulation of intrastate access service quality...In this case, for example, most of the access facilities involved are ‘mixed use’ facilities, providing both interstate and intrastate services. They are classified as interstate facilities, however, because, under FCC cost allocation rules, facilities that carry more than 10% interstate traffic must be classified as interstate, with their services federally tariffed (47 C.F.R. § 36.154). The issue here is whether that cost allocation rule, which clearly preempts state authority to require state tariffs, also preempts state authority over the quality of these intrastate services. The Commission finds that it does not.” *In the Matter of the Complaint of AT&T Communications of the Midwest, Inc. Against US West Communications, Inc. Regarding Access Service*, Minn. PUC Docket No. P-421/C-99-1183 (Order Finding Jurisdiction, Rejecting Claims for Relief, and Opening Investigation, August 15, 2000), 2000 Minn. PUC LEXIS 53, at p. \*10-\*11.

**B. *Special Access Services Should Be Included In Performance Measures Because Such Inclusion Will Promote Competition.***

In order to promote competition, it is necessary to include Special Access Services in the performance measures. SBC/Ameritech argued in the Ohio OSS proceeding that it is not necessary to include Special Access Services in performance measures because CLECs have a number of sources for Special Access Services. *In the Matter of the Further Investigation Into Ameritech Ohio's Entry Into In- Region InterLATA Service Under Section 271 of the Telecommunications Act of 1996, Public Utilities Commission of Ohio, Case No. 00-942-TP-COI; Fioretti Direct at 10.* In the same proceeding, Mr. Timothy Kagele, expert for Time Warner Telecom, refuted SBC/Ameritech's assertion because SBC/Ameritech remains the dominant provider of Special Access Services. *Id; Kagele Direct at 3.* Consequently, since SBC/Ameritech is the dominant provider, and often times the only economically viable option for providing last mile services, it is critical that SBC/Ameritech provide performance measures for Special Access Services.

Furthermore, SBC/Ameritech argued in the Ohio OSS proceeding that it is not necessary to include Special Access Services in performance measures because it already provides special access performance data. *Id; Fioretti Direct at 9.* Again, Mr. Kagele refuted SBC/Ameritech's assertion because SBC/Ameritech's provision of Special Access performance data is insufficient and should include additional critical data including more than 30 reporting metrics across six OSS categories including ordering, provisioning, maintenance, billing, administrative and additional measures, as well as jeopardy notification and facilities modification. *Id; Kagele Direct at 4-5.*

Finally, SBC/Ameritech has suggested in the Ohio proceeding that it is not necessary to include Special Access Services in performance measures because UNEs are included in

performance measures. Therefore, Mr. Fioretti suggested that CLECs should purchase UNE equivalents rather than Special Access Services. *Id; Fioretti Direct at 10*. The suggestion that CLECs should purchase UNEs rather than Special Access Services is inappropriate as SBC/Ameritech should not be permitted to dictate CLEC business practices. Furthermore, SBC/Ameritech's suggestion points out the glaring potential for discrimination by SBC/Ameritech between carriers who purchase UNEs and resale service and carriers who purchase Special Access Services. Including Special Access Services in performance measures will incent SBC/Ameritech to provide quality service, or at least service equivalent to service provided to carriers which purchase UNEs or resale service. Furthermore, Special Access Service performance measures will promote competition and not place CLECs which use Special Access Services at a competitive disadvantage based upon mode of entry.

For all the foregoing reasons, Time Warner Telecom of Indiana, L.P. respectfully submits that SBC/Ameritech must include performance metrics and associated penalties for Special Access services.

Respectfully submitted,

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Nikki G. Shoultz, Atty. No. 16509-41  
Attorney for Time Warner Telecom of Indiana, L.P.  
SOMMER & BARNARD  
4000 Bank One Tower  
111 Monument Circle  
Indianapolis, IN 46204

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Pamela H. Sherwood, Atty. No. 17552-53  
Vice President Regulatory, Midwest Region  
Time Warner Telecom of Indiana, L.P.  
4625 W. 86th Street, Suite 500  
Indianapolis, IN 46268

*Exhibit A*

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

In the Matter of the Petition of	)	
Indiana Bell Telephone Company,	)	
Incorporated d/b/a Ameritech Indiana	)	
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SPECIAL ACCESS DISPUTED ISSUE  
TESTIMONY OF TIM KAGELE  
ON BEHALF OF  
TIME WARNER TELECOM OF INDIANA, L.P.

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**1. Q. PLEASE STATE YOUR NAME, OCCUPATION AND BUSINESS ADDRESS.**

A. My name is Tim Kagele, Vice President Carrier Relations & Interconnect Operations for Time Warner Telecom. My business address is 10475 Park Meadows Drive, Littleton, CO 80124.

**2. Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

A. The purpose of my testimony is to request that the Indiana Utility Regulatory Commission (IURC) incorporate equivalent high capacity Special Access services ordered from SBC/Ameritech's state and/or federal tariffs, into the performance metrics and remedy plan of the SBC/Ameritech's MTP adopted for Indiana. My testimony is filed on behalf of Time Warner Telecom of Indiana, L.P.

**3. Q. WHAT DO YOU MEAN BY SPECIAL ACCESS SERVICES?**

- A. Special Access services are services that are purchased out of an ILEC's federal or state tariff. For example, SBC/Ameritech offers high capacity circuits, such as a DS1 and DS3 service, in its federal tariff. These services are functionally equivalent to the unbundled network elements ("UNEs") and resold high capacity services that SBC/Ameritech offers via its interconnection agreements or Resale tariffs. Special Access DS1 and DS3 services, UNE DS1 and DS3 and/or resale DS1 and DS3 services offer a combination of functionally equivalent, dedicated transport and loop network elements used to deliver a mixture of intrastate and interstate traffic to CLEC end user customers.

**4. Q. WHY ARE SPECIAL ACCESS SERVICES IMPORTANT TO THE DEVELOPMENT OF COMPETITION?**

- A. Timely provisioning of Special Access services is critical to the development of robust local competition. These services provide end users with high capacity bandwidth and are designed for and utilized by SBC/Ameritech's competitors to serve large and medium size business customers. Since SBC/Ameritech's competitors often lack the ubiquitous network reach of SBC/Ameritech, they must utilize a combination of their own network assets augmented by a high capacity circuit from SBC/Ameritech to complete the link to the customer. Competitors rely upon the Special Access services, then, to complete the service to their end users instead of duplicating SBC/Ameritech's existing network. Therefore, the use of high capacity circuits directly supports intrastate service competition.

SBC/Ameritech remains the dominant provider of Special Access Service in Indiana. In fact, no other Indiana carrier replicates SBC/Ameritech's statewide network.

SBC/Ameritech is the only economically viable option for providing last mile facility to



competitor's end user customers. Therefore, CLECs are just as dependent on the timely and proper provisioning by SBC/Ameritech of Special Access services as are CLECs that purchase equivalent high capacity services on an unbundled or resale basis.

SBC/Ameritech has different ordering arrangements that competitors must use depending on whether the high capacity circuits are ordered out of a tariff or an interconnection agreement. The processes and procedures associated with ordering Special Access have been used for many years and is well developed, but the processes for ordering unbundled or resold services are still new and competitors experience delays in provisioning. Hence, many CLECs utilize the special access ordering Access Service Request (ASR) ordering process to avoid the pitfalls, and pay a premium over the prices paid for equivalent unbundled services.

Delays in provisioning are particularly harmful in this market segment. Large business customers are not tolerant of any unanticipated delays or problems in obtaining service. If a CLEC promises a customer service on a certain date and the date is not met because of SBC/Ameritech's problems, the CLEC's reputation suffers irreparable harm. Receiving quality service from the ILEC, whether the CLEC orders that service out of a tariff or an interconnection agreement, is essential to the development of robust competition.

**5. Q. ARE SBC/AMERITECH'S CURRENT SPECIAL ACCESS REPORTING METRICS SUFFICIENT TO ENCOURAGE ROBUST COMPETITION?**

- A. No. Currently, SBC/Ameritech makes available only a handful of reporting metrics, across a limited number of OSS reporting categories, that capture its performance of Special Access services. To illustrate, SBC/Ameritech currently provides 20 reporting metrics, in two basic OSS reporting categories (provisioning and maintenance) that will

measure Special Access services but there are more than 30 reporting metrics across six OSS categories (ordering, provisioning, maintenance, billing, administrative and additional measures) that should apply to Special Access services.

Even though SBC/Ameritech's available Special Access reporting metrics address specific provisioning and maintenance reporting requirements, other critical metrics and OSS reporting categories. For instance, there are no reporting metrics in SBC/Ameritech's current Special Access reporting that capture billing performance or telephone answer and hold time performance of the Access ordering and maintenance centers. Moreover, essential reporting of SBC/Ameritech's ordering, jeopardy notification, and facility modification process is completely ignored in the current Special Access reporting metrics.

Today, any CLEC that wishes to receive Special Access reporting data for its own company may request it from SBC/Ameritech. The data reported by SBC/Ameritech is limited to only the two OSS categories, failing to capture the critical measures in the other categories that are designed to demonstrate that SBC/Ameritech is providing quality services. Given the increase in the level of local market competition and the diverse nature of the traffic supported by Special Access facilities, Time Warner Telecom finds SBC/Ameritech's available Special Access reporting metrics insufficient to support a "level" playing field, and to ensure robust competition when CLECs choose this mode of market entry.

**6. Q. ARE CLECS THAT USE SPECIAL ACCESS SERVICES PLACED AT A COMPETITIVE DISADVANTAGE?**

- A. Yes. CLECs that use Special Access services are placed at a competitive disadvantage relative to CLECs that purchase equivalent high capacity services on a resold or

unbundled basis. CLECs that purchase high capacity services on an resold or unbundled basis will have more performance data, metrics and benchmarks to measure whether they are receiving quality service, and if SBC/Ameritech's performance is below the standards, those CLECs will have remedies and penalties to compensate them for that poor service. Therefore, SBC/Ameritech will be incented to ensure that it complies with the metrics for resold and unbundled high capacity services, but will not have that same incentive for the equivalent services purchased by CLECs utilizing SBC/Ameritech's tariff-based Special Access services. CLECs should not be penalized based upon their mode of entry.

Time Warner Telecom and other CLECs have made substantial investment in plant and equipment to enable delivery of a high quality and reliable product to their end user customers. To exclude Special Access high capacity services from mandatory 271 performance reporting requirements and a Commission ordered remedy plan effectively penalizes CLECs because of their business decision to purchase high capacity services out of a tariff instead of purchasing UNEs. Not only are CLECs penalized in this manner, but SBC/Ameritech is also allowed to wiggle out of any mandatory obligation to report Special Access performance or provide warranties for failed performance as negotiated.

**7. Q. ARE THERE OTHER REASONS THAT THESE FUNCTIONALLY EQUIVALENT SERVICES SHOULD HAVE THE SAME PERFORMANCE METRICS AND ASSOCIATED PENALTIES APPLIED TO THEM?**

- A. Yes. The services offered are functionally equivalent, whether offered under a tariff or under an interconnection agreement. Any distinction between the Special Access services and UNEs is premised entirely on SBC/Ameritech's unilateral regulatory decision

whether to offer a particular service through its state or federal tariff or pursuant to an interconnection agreement. Without imposing metrics on the equivalent Special Access services, SBC/Ameritech could simply avoid metrics and remedies by assigning a particular service to the most favorable regulatory classification.

Second, SBC/Ameritech has not identified any actual differences between equivalent high capacity Special Access facilities, unbundled facilities, and resold facilities that would justify different treatment. Exclusion of high capacity Special Access services that are used to deliver mixed traffic (intrastate and interstate) amounts to disparate treatment of CLECs choosing this mode of market entry where no apparent distinction is made for equivalent unbundled or resale services.

Moreover, inclusion of Special Access services ordered from tariffs as part of 271 appears to be an overlooked area of local market competition that requires immediate attention by the IURC to protect against post 271 backsliding by SBC/Ameritech. Other state commissions, such as Minnesota and New York, have taken steps to ensure that local competition develops by beginning to review need for service standards for Special Access services. For example, due to the large number of systemic problems CLECs in the state of New York have experienced with Verizon's delivery of tariff based Special Services, CLECs have asked the New York Commission to open an investigation into Verizon's performance in this area<sup>2</sup>. Although the New York proceeding is just getting under way, there appears to be substantial support for regulation of tariff based Special Access service in a fashion that is consistent with regulation of the incumbent provider's

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<sup>2</sup> NY PSC Case 00-C-2051 – *Proceeding to Investigate Methods to Improve and Maintain High Quality Special Services Performance by Verizon New York, Inc.*; and NY PSC Case 92-C-0665 – *Proceeding on Motion of the Commission to Investigate Performance Based Incentive Regulatory Plans for New York Telephone Company.*

wholesale services. This Commission should include a similar review as part of this proceeding.

**8. Q. SHOULD EQUIVALENT SPECIAL ACCESS HIGH CAPACITY SERVICES BE ADDED TO THE EXISTING INDIANA-APPROVED PERFORMANCE MEASURES AND COMMISSION APPROVED REMEDY PLAN?**

- A. Yes. As discussed in question 5 above, SBC/Ameritech's current Special Access service reporting addresses service quality in only two OSS categories: provisioning and maintenance. Exhibit A (attached) reflects the provisioning metrics measure: Percent Missed Due Dates; Number of Missed Due Dates; Number of Circuit Additions and Changes; Missed Orders Analysis Report (by disposition); New Circuit Failure Rate; Number of New Circuit Failures; Number of Circuit Additions and Changes; and New Circuit Failures (by disposition). The maintenance metrics address: Mean Time to Restore; Total Outage Hours; Number of Failures; Maximum Time to Restore (% measured troubles restored in > 3 hours); Circuit Unavailability; Failure Rate; Number of Failures; Number of Circuits; Trouble Report Analysis (by disposition); Repeat Failure Rate; Number of Repeat Failures; and the Number of Failures.

While the aforementioned metrics may have been more than adequate when originally implemented in Indiana, they no longer generate optimum information given the limited scope of reported information and the increased use of Special Access services by competitors. Therefore, rather than initiate a new Special Access proceeding to investigate the need for development of a comprehensive performance metrics and a self effectuating remedy plan, the IURC should simply bring Special Access into the fold of products governed by the existing Performance Measures. This approach would maximize the value of the extensive resource commitment parties have made during the

Indiana 271 process while providing all the necessary standards and data for local competition to thrive.

**9. Q. CAN EQUIVALENT SPECIAL ACCESS HIGH CAPACITY SERVICE BE EASILY INCORPORATED INTO THE INDIANA APPROVED PERFORMANCE MEASURES AND REMEDY PLAN?**

- A. Yes. Using the Approved Performance Measures and remedy plan framework would result in a single measurement and enforcement process being utilized to measure performance for all high capacity circuits, whether ordered as Special Access, unbundled, or resold products, and ensure that the remedy plan does not discriminate among CLECs based on their mode of entry. Tariff based Special Access services can simply be disaggregated in the existing performance measures and reported monthly by SBC/Ameritech along with all the other equivalent high capacity unbundled or resale services as a whole. For instance, the attached Exhibit A enumerates the metrics and performance standards captured by the performance measures that are directly applicable to tariff based Special Access DS1 and DS3 services. The ultimate determination of what standards and remedy amounts to utilize will have been “based lined” from the performance measures, and reviewed periodically as part of the ongoing Indiana 271 performance measures development process. Including Special Access as a product measured under the existing performance measures would also allow direct comparison between SBC/Ameritech’s Special Access performance and its performance on other services like resale, interconnection trunks, and unbundled services. The IURC, as well as CLECs, would have all of the data necessary to ensure non-discriminatory treatment. The use of a process worked out by all parties over several months would be far more efficient than establishing and monitoring an entirely separate regime just for Special

Access. Finally, utilizing the existing performance measures and corresponding remedy plan development process would ensure that the metrics governing Special Access never become outdated since they would be constantly reviewed and refined as the overall AIT performance metrics and remedy plan is updated.

**10. Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

**A. Yes.**

## Exhibit A

### Access Service Performance Measures Mapping Indiana Performance Measures

Access Service Performance Measures	271 Performance Measures
<b>Ordering: (for both DS1 and DS3)</b>	<b>Ordering: (for UNEs)</b>
<ul style="list-style-type: none"> <li>▪ <i>No Ordering Measures Provided</i></li> </ul>	<ul style="list-style-type: none"> <li>▪ Percent Firm Order Confirmations within "X" hours (PM#5)</li> <li>▪ % Unsolicited FOCs by reason code (PM#5.2)</li> <li>▪ Average Time to Return FOC (PM#6)</li> <li>▪ Average Time to Return Mechanized Completions (PM#8)</li> <li>▪ % Rejects (PM#9)</li> <li>▪ % mechanized rejects returned within 1 hour of order receipt (PM#10.1)</li> <li>▪ % Manual Rejects Received electronically &amp; Returned within 5 hours (PM#10.2)</li> <li>▪ % Manual Rejects Received Manually and Returned within 5 hours (PM#10.3)</li> <li>▪ Mean Time to Return Mechanized Rejects (PM#11)</li> <li>▪ Mean Time to Return Manual Rejects that are Received via an Interface (PM#11.1)</li> <li>▪ Mean Time to Return Manual Rejects that are Received through the Manual Process (PM#11.2)</li> <li>▪ Mechanized Provisioning Accuracy (PM#12)</li> <li>▪ Order Process Percent Flow Through (PM#13)</li> <li>▪ Total Order Process Percent Flow Through (PM#13.1)</li> </ul>
<b>Provisioning Performance Measures: (for both DS1 and DS3)</b>	<b>Provisioning Performance Measures: (for UNEs)</b>
<ul style="list-style-type: none"> <li>▪ Percent Missed Due Dates               <ul style="list-style-type: none"> <li>▪ Number of Missed Due Dates</li> <li>▪ Number of Circuit Additions and Changes</li> <li>▪ Missed Orders Analysis Report (By Disposition) (Does disposition include the equivalent to PM#60 for UNEs?)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ Percent Ameritech Caused Missed Due Dates (PM#58)</li> <li>▪ Includes Information on Number of Due Dates and Number of Due Dates Missed               <ul style="list-style-type: none"> <li>▪ Raw data available upon request</li> </ul> </li> <li>▪ Percent Ameritech Missed Due Dates due to Lack of Facilities (PM#60)</li> <li>▪ Average Delay Days for Missed Due Dates for Lack of Facilities (PM#61)</li> <li>▪ Average Delay Days for Ameritech Caused Missed Due Dates (PM#62)</li> </ul>
<ul style="list-style-type: none"> <li>▪ New Circuit Failure Rate</li> <li>▪ Number of New Circuit Failures</li> <li>▪ Number of Circuit Additions and Changes</li> <li>▪ New Circuit Failures (By Disposition)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Percent Trouble Reports within 30 days of installation (PM#59)</li> <li>▪ Includes Information on I-cases (troubles) and Number of Orders               <ul style="list-style-type: none"> <li>▪ Raw data available upon request</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>▪ <i>No Interval Measures Provided</i></li> </ul>	<ul style="list-style-type: none"> <li>▪ Interval Measures               <ul style="list-style-type: none"> <li>▪ Average Installation Interval (PM#55)</li> <li>▪ Percent Installations Completed within "X" days (PM#56)</li> </ul> </li> </ul>



<b>Maintenance Performance Measures: (for both DS1 and DS3)</b>	<b>Maintenance Performance Measures: (for UNEs)</b>
<ul style="list-style-type: none"> <li>▪ Mean Time To Restore</li> <li>▪ Total Hours of Outage</li> <li>▪ Number of Failures</li> <li>▪ Max. Time To Restore (% measured troubles restored in &gt; 3 hours)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Mean Time to Restore (PM#67) <ul style="list-style-type: none"> <li>▪ Includes information on numerator and denominator (Hours of outage and number of failures)</li> </ul> </li> <li>▪ % Missed Appointments (PM#66)</li> </ul>
<ul style="list-style-type: none"> <li>▪ Circuit Unavailability</li> <li>▪ Failure Rate</li> <li>▪ Number of Failures</li> <li>▪ Number of Circuits <ul style="list-style-type: none"> <li>▪ Trouble Report Analysis (By Disposition)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ Trouble Report Rate (PM#65) <ul style="list-style-type: none"> <li>▪ Includes numerator and denominator (Number of Trouble Reports and Number of circuits)</li> </ul> </li> <li>▪ Percent Out of Service &lt;24 Hours (PM#68)</li> </ul>
<ul style="list-style-type: none"> <li>▪ Repeat Failure Rate</li> <li>▪ Number of Repeat Failures <ul style="list-style-type: none"> <li>▪ Number of Failures</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ Percent Repeat Reports (PM#69) <ul style="list-style-type: none"> <li>▪ Includes numerator and denominator (Number of Repeat Trouble Reports and Trouble Reports)</li> </ul> </li> </ul>
<b>Billing Performance Measures: (for both DS1 and DS3)</b>	<b>Billing Performance Measures: (for UNEs)</b>
<i>No Measures Provided</i>	<ul style="list-style-type: none"> <li>▪ Billing Accuracy (PM#14)</li> <li>▪ Percent Accurate and Complete Formatted Mechanized Bills (PM#15)</li> <li>▪ Billing Timeliness (wholesale bill) (PM#18)</li> </ul>
<b>Miscellaneous Administrative</b>	<b>Miscellaneous Administrative</b>
<i>No Measures Provided</i>	<ul style="list-style-type: none"> <li>▪ Average Speed of Answer LSC (PM#21)</li> <li>▪ Average Time Placed on Hold LSC (PM#21.1)</li> <li>▪ Grade of Service LSC (PM#22)</li> <li>▪ Percent Busy LSC (PM#23)</li> <li>▪ Average Speed of Answer LOC (PM#24)</li> <li>▪ Average Time Placed on Hold LOC (PM#24.1)</li> <li>▪ Grade of Service LOC (PM#25)</li> <li>▪ Percent Busy LOC (PM#26)</li> </ul>
<b>Additional Measures</b>	<b>Additional Measures</b>
<i>No Measures Provided</i>	<ul style="list-style-type: none"> <li>▪ Percent Orders Given Jeopardy Notices (MI 1)</li> <li>▪ Percent Orders Given Jeopardy Notices within 24 Hours of Due Dates (MI 2)</li> <li>▪ Percent Facility Modification Orders (WI 9)</li> <li>▪ Percent Due Dates not Met (FMOD Process) (WI 11)</li> </ul>

**EXHIBIT B**

**AMERITECH INDIANA'S RESPONSE TO TWTC'S STATEMENT  
OF DISPUTED ISSUE REGARDING SPECIAL ACCESS SERVICE  
INCLUDING TESTIMONY OF SALVATORE FIORETTI ON  
BEHALF OF AMERITECH INDIANA**

**STATE OF INDIANA**

**INDIANA UTILITY REGULATORY COMMISSION**

<b>In the Matter of the Petition of</b>	)	
<b>Indiana Bell Telephone Company,</b>	)	
<b>Incorporated d/b/a Ameritech Indiana</b>	)	
<b>Pursuant to I.C. 8-1-2-61 For a Three</b>	)	<b>Cause No. 41657</b>
<b>Phase Process For Commission</b>	)	
<b>Review of Various Submissions of</b>	)	
<b>Ameritech Indiana to Show Compliance</b>	)	
<b>with Section 271(c) of The Telecommunications</b>	)	
<b>Act of 1996</b>	)	

**AMERITECH INDIANA'S RESPONSE TO TIME WARNER'S  
STATEMENT OF DISPUTED ISSUE REGARDING  
SPECIAL ACCESS SERVICE**

**I. Summary of Ameritech Indiana's Position**

Time Warner Telecom of Indiana, L.P. ("Time Warner") contends that Special Access services, such as DS1 and DS3 purchased out of Ameritech Indiana's FCC No. 2 Tariff, should be included within the scope of this Section 271 proceeding. Time Warner claims, that because Special Access services are the "functional equivalent" of unbundled loops and unbundled transport (which are Section 271(c)(2)(B) checklist requirements), that Special Access service should be treated in a manner equivalent to unbundled network elements ("UNEs") and, therefore, should be included in UNE performance measures and associated remedy plan. In the alternative, Time Warner alleges that including Special Access services in UNE performance measurements should be considered by the Indiana Utility Regulatory Commission ("Commission") as part of the "public interest" component of Section 271(d)(3)(C).

Time Warner's request should be denied because it is in conflict with controlling precedent and inconsistent with the purpose of this proceeding—to review Ameritech Indiana's

compliance with Section 271(c) of the Telecommunications Act of 1996. Claims or concerns regarding Special Access services are outside the scope of a Section 271 review. CLEC efforts to introduce identical Special Access tariff issues into 271 proceedings have been routinely rejected by the Federal Communications Commission ("FCC"). Of course, if Time Warner believes that Ameritech Indiana is failing to meet its Special Access services tariff obligations it can bring a compliance action at the FCC or with this Commission (if the services are purchased from an intrastate tariff). However, Time Warner's attempt to interject extraneous Special Access tariff matters into this proceeding must be rejected based on plain terms of Section 271 and controlling FCC precedent.

**II. Ameritech Indiana's Provisioning of Special Access Services Should Not Be Included in Either the Third Party OSS Evaluation or the Performance Measures under Review in This Section 271 Proceeding.**

During the Master Test Plan collaborative discussions in Indiana, Time Warner requested that Ameritech Indiana's "HI-CAP" Centers that provision high capacity Special Access services be included in the Third Party OSS Evaluation in this proceeding.<sup>1</sup> Ameritech Indiana objected because Special Access services are outside the scope of this proceeding. Time Warner's "Statement of Disputed Issue," filed on February 21, 2001, fails to articulate any reason why these HI-CAP Centers should be tested, but instead alleges that Special Access Services should be included within the performance measures applicable to UNEs that are being reviewed in this proceeding.<sup>2</sup> Time Warner's request must be rejected because it is beyond the

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<sup>1</sup> This is documented as Issues 11 and 33 in the February 13, 2001, Indiana MTP Version 0.4 Issues matrix. Ameritech's HI-CAP Centers have been operational since access services were implemented in the early 1980's and, over the past decades, have handled significant commercial volumes of Special Access services.

<sup>2</sup> The parties agree on the Performance Measures applicable to UNEs and other checklist requirements. See Joint Petition filed with the Commission on December 27, 2000.

scope of this proceeding and in conflict with both the competitive checklist and public interest requirements of Section 271.

**A. The Purpose of this Proceeding is to Review Section 271 Compliance. This is not a Special Access Services Tariff Investigation.**

As the Commission well knows, the purpose of this proceeding is to provide it with an adequate basis to submit meaningful comments to the FCC when Ameritech Indiana files an application with the FCC for in-region interLATA authority pursuant to Section 271 of the Telecommunications Act of 1996. The Commission correctly defined its role and the purpose of this proceeding as follows:

The IURC's role in this proceeding is largely determined by Section 271(d)(2)(b), which requires the FCC to consult with the relevant state commission to verify whether the BOC has one or more approved interconnection agreements with a facilities-based competitor, or a statement of generally available terms and conditions ("SGAT"), and that either the agreements or the SGAT satisfy the 14-point competitive checklist outlined in Section 271(c)(2)(B).

Through its orders concerning past 271 applications, the FCC has effectively developed a significant role for the state commissions in this type of proceeding. Specifically, the state commissions have been delegated an essential role as the creator of the initial record upon which the FCC's review of a BOC's compliance with the Section 271 checklist will be based. Furthermore, "where the state has conducted an exhaustive and rigorous investigation into the BOC's compliance with the checklist, we [the FCC] may give evidence submitted by the state commission substantial weight in making our decision."<sup>3</sup>

The Commission is also aware that the immediate purpose of this phase of the proceeding is scope of the Indiana MTP and the evaluation of Ameritech Indiana's OSS functionality for competitive checklist compliance—not its compliance with FCC Special Access tariffs, or efforts to modify the terms of those Special Access tariffs. Time Warner simply ignores this very clear focus. And, as shown below, the Commission should reject Time Warner's attempt to expand the horizons of this Section 271 proceeding.

**B. The FCC Has Held That Special Access Services are Outside the Scope and Not Relevant to a Review of Compliance with the Competitive Checklist in Section 271(c)(2)(B).**

Time Warner concedes that Special Access is “not specifically mentioned in Section 271.” (Time Warner Brief at 3.) Nonetheless it argues that because Special Access uses components that are the “functional equivalent” of unbundled loops and unbundled transport, which are checklist requirements, that somehow Special Access should also be included in the Section 271 competitive checklist. (Time Warner Brief at 3.) Therefore, Time Warner claims that Special Access Services, provided by Ameritech Indiana under its FCC No. 2 interstate access tariff, should also be included in the performance metrics and benchmarks that Ameritech Indiana offers for unbundled network elements pursuant to interconnection agreements.

Time Warner’s argument, however, ignores the fundamental distinctions between Special Access services and UNE offerings that underlie these very different offerings. These statutory, policy and product distinctions have not been lost on the FCC, however. The FCC has consistently rejected CLEC assertions, identical to Time Warner’s claim here, that Bell operating company Special Access service offerings should be considered within the scope of Section 271 checklist compliance.

Although, the FCC has recognized that interstate access is a tariffed point-to-point service offering that on a functional level is of course equivalent to the sum of its underlying parts or elements, it has never found that equivalency on a product level.<sup>4</sup> The fundamental distinction is both simple and of critical importance. Special Access services are a tariffed

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<sup>3</sup> August 29, 2000 Order in Cause 41657, at p. 2, emphasis added, footnotes deleted.

<sup>4</sup> See Memorandum Opinion and Order, Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, CC Docket No. 99-295, (1999) at ¶ 340 and note 1050 (“Bell Atlantic New York Order”).

offering to carriers, while the provisioning of the UNEs are mandated wholesale offerings. Moreover, because regulatory policy considerations underlying access service offerings, such as universal service considerations, are reflected in the terms and conditions of access services but not in the terms and conditions of wholesale UNE and resale offerings, which reflect very different policy considerations, Special Access services should not be treated the same as the combination of its functional UNE equivalents.

Likewise, when Ameritech Indiana offers its Special Access services it does so on rates, terms and conditions it establishes and offers via its access tariffs. Those prices, terms and conditions reflect the business and regulatory policies that relate to those access service offerings. As Mr. Fioretti describes in his testimony attached hereto as Exhibit A, there are also operational differences, including interfaces for special access services and UNEs. (Id.) He describes how UNEs and special access services are provisioned and maintained via different and separate processes. (Id. at 4,5.) In short, Ameritech Indiana's performance for Special Access services is solely a matter of tariff compliance, it has nothing to do with Section 271 checklist compliance, nor should it.

Unlike Time Warner here, the FCC recognizes these differences between Special Access and UNEs. For example, in December, 1999, when the FCC approved Bell Atlantic's New York's Section 271 application, it refused to "accept the assertion by a number of these parties that the provision of special access should be considered for determining checklist compliance in this proceeding."<sup>5</sup> The FCC reasoned that although dedicated local transport and the interoffice portion of special access are generally provided over the same facilities, they differ in a number

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<sup>5</sup> Bell Atlantic New York Order at ¶ 340.

of respects. The FCC noted that special access is a service offering as opposed to a UNE and that while local transport is provided between the telephone company's wire centers or switches, with special access at least one end of the transmission facility is located at a customer's premises. It concluded that checklist compliance proceedings are not intended to encompass the provision of access services simply because those services use some of the same components or physical facilities as a checklist item.

Six months later, when the FCC approved SBC's Texas Section 271 application, it reaffirmed that position in response to the identical claim Time Warner raises here: "As we found in the *Bell Atlantic New York Order*, we do not consider the provision of special access services pursuant to tariff for purposes of determining checklist compliance."<sup>6</sup> More recently, the FCC did not specifically address this issue when it approved SBC's Kansas and Oklahoma Section 271 applications just a month ago, but that is because no party any longer claimed that Special Access services should be included in a Section 271 checklist review.

Time Warner fails to distinguish this controlling precedent and that is, of course, because it can not be distinguished. There is no reason, nor does Time Warner offer one, why the identical claim routinely rejected by the FCC in its prior Section 271 Orders should not also be rejected by this Commission in this Section 271 checklist compliance case. The FCC authority Time Warner that does rely upon is inapposite. (Time Warner Brief at 2-3). The *UNE Remand Order* supports Ameritech Indiana's position that Special Access services are clearly different from unbundled network elements, and are based on significantly different regulatory policies.

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<sup>6</sup> See Memorandum Opinion and Order, In the Matter of Application of SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to provide In-Region, InterLATA Services in Texas, CC Docket No. 00-65 (Rel. June 30, 2000 at ¶ 335 ("SBC Texas Order")).



The FCC's recent *Public Notice* released on January 24, 2001, in the *UNE Remand* proceedings is just that, a Notice seeking comments. It in no manner reverses the FCC's clear 271 precedent.

Therefore, because the FCC has determined that Special Access service provided pursuant to tariff is not a checklist requirement, neither as a local loop nor as local transport, this Commission cannot expand the competitive checklist, as Time Warner requests, to include Special Access service. Congress has determined the scope of the Section 271 competitive checklist and neither the FCC, nor this Commission, nor Time Warner, have the authority to "extend the terms used in the competitive checklist set forth in subsection (c)(2)(B)."<sup>7</sup>

**C. Special Access Service Claims or Concerns Are Also Outside the Scope of the "Public Interest" Inquiry in Section 271(d)(3)(C).**

Implicitly conceding there is no valid claim that Special Access service is a Section 271 checklist requirement, Time Warner argues that this Commission should not be "constrained" by that statutory limitation, but rather should require that Special Access service be considered a Section 271 requirement under the public interest section in Section 271(d)(3)(C). (Time Warner Brief at 4.) Again, however, the FCC has rejected that identical request. In its *Bell Atlantic New York Order*, the FCC not only concluded that Special Access service was outside the scope the checklist requirements it also held: "we also conclude that there is no need to consider the provision of special access in the context of the public interest requirement."<sup>8</sup> Again, this precedent is binding on this Commission's investigation into Ameritech Indiana's compliance with Section 271.

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<sup>7</sup> 47 USC Section 271(d)(4).

<sup>8</sup> See *Bell Atlantic New York Order*, *supra* at ¶ 340, note 1052.

While Time Warner implies that there are discrimination concerns between special access service and UNEs, this is inconsistent with the FCC's refusal to equate Special Access and UNEs in Section 271 proceedings, as well as with the very nature of access services and UNEs. As noted above, the pricing, terms and conditions associated with Special Access service are not the same as the sum of the functionally equivalent UNEs. As a result, Special Access service and UNEs represent *different choices* for carriers with tradeoffs based on those different prices, terms and conditions. It is unreasonable for Time Warner to ignore all of those distinctions when it comes to performance measurements and remedies. Rather, the relevant concern as to Special Access service is whether it has been provided in a manner that is consistent with the relevant tariff and does not unreasonably discriminate in the provision of service to one special access customer relative to another.<sup>9</sup> Accordingly, for Special Access services, Section 271 OSS performance measures are simply not relevant.

In any event, and contrary to Time Warner's statements, Ameritech Indiana does maintain and provide to its Special Access carrier customers, including Time Warner, relevant tariff compliance performance data. Mr. Fioretti's testimony lists the provisioning, maintenance and other data provided to Special Access customers. (Fioretti at 7,8) Such data permits the carrier to determine if Ameritech Indiana is meeting the terms of the Special Access service tariff offering. Mr. Fioretti also demonstrates that Ameritech Indiana is most certainly incented to provide high quality Special Access services to carriers. (Id.) He testified that Ameritech Indiana provides automatic credits to Special Access carrier customers under its FCC No. 2 tariff

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<sup>9</sup> Time Warner refers to access service proceedings in New York and Minnesota. (Time Warner Brief 5-6.) Contrary to the implication raised in Time Warner's brief, these proceedings are **not** Section 271 competitive checklist investigations. Rather they are investigations into the terms and conditions of tariff service offerings. If this Commission believes an investigation into the provision of access service is necessary, it of course, can undertake such an inquiry. Those questions, however, are clearly outside the scope of this Section 271 docket.

both when installation and/or service restoration intervals are not met or when service interruptions occur. (Id. at 5-6.) Thus, carriers cannot be “singled out” for disparate treatment, as Time Warner would like the Commission to believe. (Time Warner Brief at 4, 6-8.)

Finally, as Time Warner acknowledges, it is using Special Access as a local service entry vehicle based on its unique market entry strategy. (Time Warner Brief at 7-8.) In so doing, it has certain benefits not available to carriers that use UNEs as their market entry vehicle. For example, unlike those employing a UNE entry strategy, CLECs using Special Access need not certify substantial local traffic levels. As the Commission knows, such certification has been required by the FCC to assure continued fulfillment of universal service policy objectives which are reflected in the terms and conditions of Ameritech Indiana’s Special Access services but not in its wholesale UNE/resale offerings.<sup>10</sup> If the CLECs using Special Access as a local market entry strategy now wish to be treated as the “functional equivalent” of wholesale UNE customers, they need only to certify their traffic levels and request that the existing Special Access Circuits be converted to an existing UNE loop-transport combination. At that point, the performance measures applicable to UNEs will be made available to them. On the other hand, if they choose to continue to purchase Special Access services from Ameritech tariffs, then the terms and conditions in those tariffs, including service performance and service credits, will apply. This is not some violation of the public interest or some form of discrimination as Time Warner claims; rather it is simply called freedom of choice.

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<sup>10</sup> Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Supplemental Order, FCC 99-370, at ¶¶ 405 (rel. Nov. 24, 1999).

### **III. Conclusion**

For the reasons discussed above, and as demonstrated in the testimony of Mr. Fioretti, Ameritech Indiana respectfully requests that the Special Access disputed issue be resolved in its favor and that Time Warner's request be denied.

Respectfully submitted,

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Sue E. Stemen (1988-49)  
Ameritech Indiana  
240 N. Meridian Street, Room 1831  
Indianapolis, Indiana 46204  
Telephone: (317) 265-3676  
Facsimile: (317) 265-3343

Attorney For Indiana Bell Telephone Company,  
Incorporated D/B/A Ameritech Indiana

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served electronically upon the following this 26<sup>h</sup> day of February, 2001.

Karol Krohn  
Office Of Utility Consumer Counselor  
Indiana Government Center North  
100 North Senate, Room N501  
Indianapolis, Indiana 46204

Douglas W. Trabaris  
Senior Attorney  
At&T Corp.  
222 West Adams Street; 15<sup>th</sup> Floor  
Chicago, Illinois 60606

Michael J. Huston  
Michael E. Allen  
Baker & Daniels  
300 North Meridian Street; Suite 2700  
Indianapolis, Indiana 46204

Pam Sherwood Vice President  
Regulatory Affairs, Midwest Division  
Time Warner Communications  
4625 W. 86<sup>th</sup> Street, Suite 500  
Indianapolis, Indiana 46268

John Kern  
2300 N. Barrington Road, Suite 400  
Hoffman Estates, Il 60195

Frank Darr  
National Regulatory Research Institute  
1080 Carmack Road  
Columbus, Oh 43210

Jack R. Boheim  
President  
Mtg Consulting  
P.O. Box 2448  
Mendocino, Ca 95460

Nikki Gray Shoultz  
Sommer & Barnard, Pc  
4000 Bank One Tower  
111 Monument Circle  
Indianapolis, Indiana 46204

Charles R. Mercer, Jr.  
Sprint  
One North Capitol Ave., Suite 540  
Indianapolis, Indiana 46204

Robert K. Johnson  
Christopher C. Earle  
Bose Mckinney & Evans  
2700 First Indiana Plaza  
135 North Pennsylvania Street  
Indianapolis, Indiana 46204

Ellyn Elise Crutcher  
Associate General Counsel  
McLeodUSA Telecommunications  
Services, Inc.  
121 South 17<sup>th</sup> Street  
Mattoon, Il 61920

Richard E. Aikman, Jr.  
STEWART & IRWIN  
Two Market Center  
251 East Ohio Street, Suite 100  
Indianapolis, In 46204

William Powers  
111 Monument Circle, Suite 302  
Indianapolis, IN 46204

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Sue E. Stemen

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

In the Matter of the Petition of	)	
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Pursuant to I.C. 8-1-2-61 For a Three	)	Cause No. 41657
Phase Process For Commission	)	
Review of Various Submissions of	)	
Ameritech Indiana to Show Compliance	)	
with Section 271(c) of The Telecommunications	)	
Act of 1996	)	

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SPECIAL ACCESS DISPUTED ISSUE  
TESTIMONY OF SALVATORE FIORETTI  
ON BEHALF OF  
AMERITECH INDIANA

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**Q. Please state your name, title and business address.**

A. My name is Salvatore Fioretti. I am employed by SBC/Ameritech as Director – Performance Measures – Long Distance Compliance. My business address is 2000 W. Ameritech Center Drive, Location 4G48, Hoffman Estates, IL 60196.

**Q. What are your duties and responsibilities in that capacity?**

A. My responsibilities include representing SBC/Ameritech and its operating companies in state sponsored collaborative workshops on performance measurements, working with internal subject matter experts to develop policy and positions for those companies with regard to the measurement of wholesale performance, and managing the implementation of performance measurements and remedy plans. I am also involved in the preparation and distribution of

periodic performance reports and the analysis of performance results. Finally, I work with third-party auditors with respect to testing and audits of the performance data.

**Q. How long have you served in that capacity?**

A. Since June 1999.

**Q. What is your professional experience?**

A. Prior to assuming my present position, I worked as the Director of Service - National Accounts for Ameritech Information Industry Services (AIIS) from August 1996 to June 1999. In that position, I worked with CLECs on operational issues on a day to day basis. I also presented our proposals for performance measurement and performance results in face-to-face meetings with AT&T, MCI, and Sprint as well as with other carriers.

Prior to August 1996, I was a member of Ameritech's corporate Information Technology Group and managed the development and implementation of its OSS and measurement processes and systems. Overall, I have had 22 years experience in telecommunications with Ameritech in Network Installation and Maintenance, Network Staff and Information Technology positions.

**Q. What is your education?**

A. I earned a Bachelor of Business degree from Western Illinois University in 1978 and the degree of Masters in Business Administration from the Keller Graduate School, Chicago, Illinois, in 1988.

**Q. What is the purpose of your testimony?**

A. The purpose of my testimony is to respond to the disputed issue raised by Time Warner Telecom regarding the inclusion of Special Access services (specifically hi-cap services DS1/DS3) into the performance measurements and remedy plan established to show compliance with Section 271 of the Telecommunications Act of 1996. As I demonstrate below, that the request should be denied.

**Q. What is the nature of the dispute regarding Special Access Services?**

A. The dispute is regarding whether special access services, purchased out of the FCC No. 2 tariff, should be included as a product disaggregation in the performance measures and the associated remedy plan designed for UNEs and resale. Time Warner proposes that these access services should be included with the same measurement objectives as the equivalent UNEs. It is Ameritech Indiana's position that the 271 performance measurements and remedies were implemented to measure Ameritech's compliance with the specific requirements established by the FCC for local service related activities (UNEs and resale) and not for special access services.

**Q. What is your understanding of the purpose of this proceeding?**



A. It is my understanding that this proceeding (Cause No. 41657) relates to the investigation into Ameritech Indiana's entry into in-region InterLATA service under section 271 of the Telecommunications Act of 1996. This issue specifically relates to the performance measurements to be implemented in order to demonstrate the non-discriminatory provision of OSS to CLECs as required by the FCC pursuant to section 271 of the Act.

**Q. Are access services ordered, provisioned, and maintained in the same manner as UNEs and resale?**

A. No.

**Q. Please describe the differences in the way that access services are ordered, provisioned, and maintained as compared to UNEs and resale?**

A. First, inter-state special access services are purchased under the FCC tariff rather than from the terms of an interconnection agreement or a resale or unbundled network element tariff. Second, the interfaces between the carriers and SBC/Ameritech for special access are different than for their UNE and resale counterparts. Third, they are provisioned and maintained via different, separate processes than the equivalent UNE products. Access Services are ordered via the ASR (Access Service Request) process through the ASC (Access Service Center) while their UNE counterparts are ordered via the LSR (Local Service Request) process from the LSC (Local Service Center). Different processes support these products because they are intended for different customers (Access Carriers) and for use in

the provision of access services, as opposed to UNEs, which are used to provide CLEC local services.

**Q. Do you agree with Mr. Kagele's characterization of Special Access DS1 and DS3 services as being "functionally equivalent" to UNE DS1 and DS3 dedicated transport Unbundled Network Elements (UNEs)?**

A. Not entirely. On page 2 of his testimony, Mr. Kagele states that "Special Access DS1 and DS3 services, UNE DS1 and DS3 and/or resale DS1 and DS3 services offer a combination of functionally equivalent, dedicated transport and loop network elements used to deliver a mixture of intrastate and interstate traffic to CLEC end user customers." While I generally agree with that statement as a functional matter, the key point made by Mr. Kagele are the differences between the two. As Mr. Kagele correctly concedes, UNE products are network elements, that by themselves do not provide a service. The CLEC uses or combines UNE products with other network elements to provide its own unique brand of telecommunications service as contemplated under the Act. Special Access services, on the other hand, are not UNEs; rather, they are distinctly different. They are Ameritech Indiana's services (*i.e.*, a point to point transmission service) that provide an end-to-end service to its carrier customers.

**Q. Do CLECs have a choice between UNEs and Special Access?**

A. Yes, after the 1996 Telecommunications Act was passed, CLECs had a number of different local entry options. Those CLECs who utilize Special Access in the provision of local service do so by virtue of their own business decision, choosing a configuration which utilizes Ameritech Indiana's end-to-end service rather than combining the individual Unbundled Network Elements (dedicated transport and UNE loops) that are available to the CLEC on an unbundled basis.

**Q. Should Special Access performance measurements be considered in this Section 271 docket?**

A. No, they have nothing to do with Ameritech Indiana's provision of UNEs as required by the checklist in Section 271. The evaluation of Ameritech's performance with respect to section 271 should not be subject to the CLEC's independent business decision to utilize a Special Access service instead of the individual Unbundled Network Elements that comprise it.

**Q. Are you aware of whether the FCC has addressed whether Special Access service should be included within a Section 271 checklist review?**

A. Yes. The FCC has specifically rejected the inclusion of special access in 271 proceedings. In Bell Atlantic's 271 (and subsequently in Texas) proceeding, the FCC stated:

"We do not believe that checklist compliance is intended to encompass the provision of tariffed interstate access services simply because these services use some of the same physical facilities as a checklist item. We have never

considered the provision of interstate access services in the context of checklist compliance before.”<sup>1</sup>

**Q. Does Ameritech provide CLECs with service performance measurements relative to the Special Access Services provided to them by Ameritech Indiana?**

A. Yes. The specific areas for which Ameritech provides performance data to carriers are as follows:

Provisioning

- Percent of Orders not completed by Customer Desired Due Date
- Percent of orders not completed by Due Date
- Customer Not Ready – Inter Exchange Carrier Caused
- Customer Not Ready – Independent Company Caused
- Customer Not Ready – Customer Caused
- Total Customer Not Ready Percentage
- Percent Add (new) Orders with Customer Network Trouble Report within 30 Days of Complete Date

Maintenance

- Repair Frequency – Reports per 100 circuits
- Repair Restoral – Average Duration of Network Customer Trouble Reports

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<sup>1</sup> FCC Memorandum Opinion and Order, CC Docket No. 99-295, Application of Bell Atlantic New York for Authorization Under Section 271 to Provide In-Region, InterLATA Service In New York at ¶ 340. See also FCC Memorandum Opinion and Order, CC Docket No. 00-65, Application of SBC Communications, Inc., Southwestern Bell Telephone Company et al for Authorization Under Section 271 to Provide In-Region, InterLATA Service In Texas at ¶ 335 (*Reaffirming that provision of special access services pursuant to tariff is not relevant to 271 compliance*).

- Time To Restore  $\leq 3$  Hours for a Measured Network Customer Trouble Report
- Percent Repeated Network Customer Trouble Reports within 30 days

Other

- Percent Electronically Bonded Troubles
- Percent Network Availability (availability of circuits)
- Percent Non-Productive Troubles

Upon request, the SBC/Ameritech Account Team will provide CLECs performance data for services that they purchase, for each of these measurements disaggregated by service type. Service Type disaggregations are defined as Special/designed (DS3, DS1, DDS, and VGPL), Carrier (T3 and T1), and OCN (Sonet).

- Q. Time Warner contends that Ameritech lacks incentive to improve performance with respect to Special Access Services. Do you agree with his conclusion?**
- A. No I do not. First and foremost, it must be remembered that Special Access is an Ameritech Indiana service. Its reputation and good name is on the line each day it provides those services to carriers. Ameritech Indiana profits from its sale of those services and it naturally seeks to maximize its revenue from that product. Carriers have readily available alternatives for these services and therefore, Ameritech Indiana is very directly incented to provide high quality service. Ameritech also has a number of other incentives to provide high quality special access services to CLECs. For example, if high quality service is not provided,

service credits are available to carriers. There are three areas where Ameritech provides credits to customers with regard to the performance in the provisioning and maintenance of Special Access Services. They are:

- The Enhanced Performance Assurance Program, Section 7.4.16, page 309.12.1 of the FCC No. 2 Tariff. This program provides an on time installation, installation interval, and service restoration assurance program to customers who purchase Special Access DS0 and non-channelized (point-to-point) DS1 services. The program establishes certain installation and repair performance parameters, and provides credits to customers, as specified herein, in the event that these performance parameters are not met.
- The Installation Interval Guarantee provided for in Section 7.4.15 page 309.12 of the FCC No. 2 Tariff. This guarantee applies to DS1, DS3, Base Rate and Direct Analog and Digital Services. This guarantee involves a credit of nonrecurring charges where Ameritech fails to meet the installation interval service date as specified in Ameritech Interval Guide Publication AM-TR-MKT-000066.
- The Credit For Service Interruption, Section 2.4.4, page 47.1 of FCC No. 2 Tariff. This guarantee provides credit to customers for service interruption.

**Q. How are these credits provided to customers?**

A. All three guarantees provide for the automatic application of credits to the customers when the committed objectives are not met. According to the tariff, performance for the Enhanced Performance Guarantee is calculated on a quarterly

basis. Except for the 4th quarter of 2000, Ameritech has met the committed levels of service on a quarterly basis, since the tariff went into effect in 1997.

Ameritech is currently in the process of calculating credits for all customers who installed service for that period as required by the Enhanced Performance Guarantee.

The Installation Interval Guarantee and the Credit for Service Interruption are structured differently than the Enhanced Performance Guarantee, as they are calculated and applied on an order and trouble report basis. The Access Service Center (ASC) receives a report of missed due dates and for troubles with extended out of service duration from Network once each week. The ASC then utilizes a mechanized tool that calculates the adjustment amount and then issues the adjustment without the need for carrier customer request or intervention.

**Q. In your opinion, are the CLECs at a competitive disadvantage if special access measurements are not included in the 271 performance measurements and remedy plan?**

A. No, I don't believe they are. Ameritech has established a well-defined set of performance measurements for Special Access Services that are available through the Account Team. Aggregate Ameritech performance is measured and remedies (credits) for not meeting objectives are calculated and applied to carriers' bills. This program is available in all five Ameritech states and does not discriminate by customer. It is applied to any party that purchases these services from the FCC No. 2 tariff.

**Q. Does that conclude your testimony?**

**A. Yes.**



**EXHIBIT C**

**TWTC'S REPLY TO AMERITECH INDIANA'S RESPONSE ON  
SPECIAL ACCESS STATEMENT OF DISPUTED ISSUE**

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

In the Matter of the Petition of	)	
Indiana Bell Telephone Company,	)	
Incorporated d/b/a Ameritech Indiana	)	
Pursuant to I.C. 8-1-2-61 For a Three	)	Cause No. 41657
Phase Process For Commission	)	
Review of Various Submissions of	)	
Ameritech Indiana to Show Compliance	)	
with Section 271(c) of The Telecommunications	)	
Act of 1996	)	

**TIME WARNER TELECOM'S REPLY  
TO AMERITECH INDIANA'S RESPONSE ON  
SPECIAL ACCESS STATEMENT OF DISPUTED ISSUE**

In its reply to Time Warner Telecom of Indiana, L.P.'s ("Time Warner Telecom") Statement of Disputed Issue on Special Access, Ameritech Indiana contends that Ameritech Indiana "is most certainly incented to provide high quality Special Access service to carriers...." and that "Ameritech Indiana provides automatic credits to Special Access carrier customers under its FCC No. 2 tariff both when installation and/or service restoration intervals are not met or when service interruptions occur." *Ameritech Indiana Response at 8-9.* Ameritech Indiana implies that because it must credit carriers who experience poor service quality for Special Access Services, Ameritech will provide acceptable quality of service.

Time Warner Telecom notes that Ameritech Indiana's retail tariffs have similar credit provisions, yet those credit provisions have historically been insufficient to ensure that end users receive good service quality. In fact, service quality data demonstrates that Ameritech Indiana simply elects to pay applicable credits *without improving* quality of

service. It is for precisely the same reason that credits for poor Special Access service quality are insufficient.

Time Warner Telecom does not have the option to purchase special access from another provider if Ameritech provides poor quality of service. Where, as here, Ameritech is the sole provider of a service (Time Warner Telecom cannot purchase Special Access Service from any other carrier), it is imperative that those services be subject to performance measures and associated penalties.

Respectfully submitted,

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Nikki G. Shoultz, Atty. No. 16509-41  
Attorney for Time Warner Telecom of Indiana, L.P.  
SOMMER & BARNARD  
4000 Bank One Tower  
111 Monument Circle  
Indianapolis, IN 46204

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Pamela H. Sherwood, Atty. No. 17552-53  
Vice President Regulatory, Midwest Region  
Time Warner Telecom of Indiana, L.P.  
4625 W. 86th Street, Suite 500  
Indianapolis, IN 46268

#### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served electronically upon the following this 1st day of March, 2001.

Karol Krohn  
Office Of Utility Consumer Counselor  
Indiana Government Center North  
100 North Senate, Room N501  
Indianapolis, Indiana 46204

Douglas W. Trabaris  
Senior Attorney  
At&T Corp.  
222 West Adams Street; 15<sup>th</sup> Floor  
Chicago, Illinois 60606

Michael J. Huston  
Michael E. Allen  
Baker & Daniels  
300 North Meridian Street; Suite 2700  
Indianapolis, Indiana 46204

Pam Sherwood Vice President  
Regulatory Affairs, Midwest Division  
Time Warner Communications  
4625 W. 86<sup>th</sup> Street, Suite 500  
Indianapolis, Indiana 46268

John Kern  
2300 N. Barrington Road, Suite 400  
Hoffman Estates, Il 60195

Frank Darr  
National Regulatory Research Institute  
1080 Carmack Road  
Columbus, Oh 43210

Jack R. Boheim  
President  
Mtg Consulting  
P.O. Box 2448  
Mendocino, Ca 95460

Sue E. Stemen  
Ameritech Indiana  
240 North Meridian Street  
Indianapolis, Indiana 46204

Charles R. Mercer, Jr.  
Sprint  
One North Capitol Ave., Suite 540  
Indianapolis, Indiana 46204

Robert K. Johnson  
Christopher C. Earle  
Bose Mckinney & Evans  
2700 First Indiana Plaza  
135 North Pennsylvania Street  
Indianapolis, Indiana 46204

Ellyn Elise Crutcher  
Associate General Counsel  
McleodUSA Telecommunications  
Services, Inc.  
121 South 17<sup>th</sup> Street  
Mattoon, Il 61920

Richard E. Aikman, Jr.  
STEWART & IRWIN  
Two Market Center  
251 East Ohio Street, Suite 100  
Indianapolis, In 46204

William Powers  
111 Monument Circle, Suite 302  
Indianapolis, IN 46204

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Nikki G. Shoultz, #16509-41

**EXHIBIT D**

**PUBLIC UTILITY COMMISSION OF TEXAS ORDER NO. 33  
APPROVING MODIFICATIONS OF PERFORMANCE REMEDY  
PLAN AND PERFORMANCE MEASUREMENTS**

**PROJECT NO. 20400**

<b>SECTION 271 COMPLIANCE</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>MONITORING OF SOUTHWESTERN</b>	<b>§</b>	
<b>BELL TELEPHONE COMPANY OF</b>	<b>§</b>	<b>OF TEXAS</b>
<b>TEXAS</b>	<b>§</b>	

**ORDER NO. 33**

**APPROVING MODIFICATIONS TO PERFORMANCE  
REMEDY PLAN AND PERFORMANCE MEASUREMENTS**

This Order, as issued by the Public Utility Commission of Texas (Commission), approves modifications to the Performance Remedy Plan (Plan) and Performance Measurements (Measurements) included in Attachment 17 to the Texas 271 Agreement (T2A) as recommended by Commission Staff or agreed to by the parties. The revised Measurements shall be designated as Version 2.0 and shall supercede Version 1.7. The revisions to both the Plan and the Measurements shall be incorporated by Southwestern Bell Telephone Company (SWBT) into Attachment 17 to the T2A and filed by June 15, 2001. Attachment 17, as revised by this Order, shall supercede the previous version of the document. The required changes are identified in the attached matrix.

Version 2.0 and any revisions to the Plan included in this Order shall become effective July 1, 2001.

**Ordering Paragraphs**

1. SWBT shall file a revised Performance Remedy Plan and Version 2.0 of the Performance Measurements by June 15, 2001. The revised Plan and Performance Measurements shall contain all of the modifications contained in the matrix, including the modifications to the proposed measures attached to the matrix.

2. SWBT shall also file revised appendices to the Performance Remedy Plan within the same time frame.<sup>1</sup> The revised appendices shall reflect the Commission's changes to the Plan and to the Performance Measurements.

**SIGNED AT AUSTIN, TEXAS the \_\_\_\_\_ day of May, 2001.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**PAT WOOD, III, CHAIRMAN**

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**BRETT A. PERLMAN, COMMISSIONER**

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<sup>1</sup> There are two appendices in Attachment 17 to the T2A that are titled, "Measurements Subject to Per Occurrence Damages or Assessment with a Cap" and "Performance Measures Subject to Tier-1 and Tier-2 Damages Identified as High, Medium and Low."

**EXHIBIT E**

**EXCERPT FROM TEXAS 271 PROCEEDING PERFORMANCE  
MEASURE MATRIX ON SPECIAL ACCESS ISSUE SHOWING  
SWBT & CLEC COMMENTS AND COMMISSION RULING**



Issue	SWBT's Comments	CLECs' Comments	Commission Ruling
Special Access Issue	<p>Worldcom requests that the Commission implement PMs assessing SWBT's provision of special access services to interexchange carriers (IXCs). The Commission should reject this request for the reasons stated below:</p> <ul style="list-style-type: none"> <li>Performance measurements adopted in connection with a Section 271 proceeding are meant solely to "provide valuable evidence regarding SWBT's compliance or noncompliance with individual (Section 271) checklist items" relative to wholesale services provided to CLECs (SBC Kansas/Oklahoma Order, para. 31). These measurements, and the checklist items to which they correlate, have nothing to do with SWBT providing retail special access services, under tariff, to IXCs.</li> <li>The Oklahoma Commission recently considered the issue of whether special access should be included within the interconnection agreement (O2A). They determined that "issues, which relate to the provisioning of long distance service, should not be included in this Agreement...." (Order of the OCC, Application of AT&amp;T for Compulsory Arbitration of Unresolved issues with SWBT pursuant to § 252(B) of the Telecommunications Act of 1996, p. 3). PMs are included within the T2A as Attachment 17, and special access is the provisioning of long distance services. It simply follows that if issues related to long distance service are not included within the Agreement, then they certainly should not be included within the PMs, an attachment to that Agreement.</li> <li>The FCC determined in both its SBC Texas Order (para. 335) and Bell Atlantic New York Order (para. 340) that checklist compliance is not intended to encompass the provision of tariffed special access services. The FCC again reiterated</li> </ul>	<p>WCOM and TWTC respectfully urge the Commission to authorize performance measurements for special access services. With SWBT providing access services to its long distance affiliate, SWBT has the incentive to discriminate against unaffiliated long distance carriers. Indeed, WCOM and TWTC have experienced a deterioration in special access services since SWBT's long distance affiliate began selling long distance in Texas.</p> <p>Furthermore, at the April 5th workshop, several CLECs outlined why CLECs have to order special access to provide local service in Texas. For example, if SWBT disputes the availability of a particular network element, CLECs are forced to order the network element as special access. In other instances, facilities for special access are available when the equivalent facilities for network elements are not. Finally, CLECs have stated in past 271 workshops that the ordering and provisioning systems for special access are often more reliable than the equivalent systems for network elements.</p>	<p>The Commission finds that, to the extent a CLEC orders special access in lieu of UNEs, SWBT's performance shall be measured as another level of disaggregation in all UNE measures. The Commission also finds it appropriate to conduct a workshop, consistent with the discussion at the May 24, 2001 Open Meeting, on the issue of special access and UNEs.</p>

Issue	SWBT's Comments	CLECs' Comments	Commission Ruling
	<p>its position regarding whether special access should be considered within the Section 271 process in para. 211 of its April 16, 2001 Memorandum Opinion and Order, CC Docket No. 01-9, FCC 01-130. The FCC held that "[t]he Commission previously determined in the Bell Atlantic New York Order that checklist compliance is not intended to encompass provision of tariffed interstate services simply because these services use some of the same physical facilities as a checklist item. We note, however, that to the extent parties are experiencing delays in the provisioning of special access services ordered from Verizon's federal tariffs, these issues are appropriately addressed in the Commission's section 208 complaint process." This again demonstrates that special access does not belong within the context of measuring a Bell Operating Company's (BOC) performance in the provisioning of local exchange service.</p> <ul style="list-style-type: none"> <li>SWBT currently makes available special access performance data, pursuant to § 272(c)(1), which requires that a BOC, such as SWBT, fulfill the access service requests of unaffiliated entities no less timely than its own or its affiliates' requests. Worldcom is free to petition the FCC to alter these existing measurements, and it would be best that they do so given the FCC's role in interpreting the requirements of Section 272.</li> </ul>		
K Value	<ul style="list-style-type: none"> <li>SWBT is required to perform twice as many tests as is shown for each entry in the K tablefirst at Tier 1 and then again at Tier 2.</li> <li>K – table is based on the number of tests with 10 or more data points, but in actuality performance tests are done on all measures with at least one data point. This increases the number of tests being done without</li> </ul>	<p><b>AT&amp;T:</b></p> <p>AT&amp;T believes that the K value is excusing SWBT from Tier 1 payments at a higher volume and rate than was anticipated when the K-value concept was incorporated into the Texas plan. Intended to control for Type 1 error, which the plan is designed to restrict</p>	<p>The Commission finds that, in light of SWBT's performance on Tier 1 measures, the Commission should not modify the Performance Remedy Plan at this time, except with reference to PM 13. For PM 13, to the extent the performance delivered to a CLEC is a "miss" for two consecutive months, the K value shall not exclude PM 13 from liquidated damage payments.</p>

<sup>1</sup> See letter filing made by SWBT on May 2, 2001 in this Project.